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SENSITIVE

E.O. 12958: N/A
TAGS: [ETRD](#) [KIPR](#) [TU](#)
SUBJECT: UPDATE ON INTELLECTUAL PROPERTY ISSUES:
COPYRIGHT LAW AND ENFORCEMENT

SUMMARY

1. (U) THE CULTURE MINISTRY IS CONSIDERING AN ARRAY OF LEGAL AMENDMENTS AND OTHER MEASURES AIMED AT COMBATING COPYRIGHT PIRACY, INCLUDING A BAN ON STREET SALES OF CULTURAL MATERIALS AND EMPOWERING THE POLICE TO ENFORCE COPYRIGHT WITHOUT SPECIFIC PROMPTS FROM RIGHTHOLDERS. THE MINISTRY REITERATED ITS INTENTION TO JOIN THE WIPO INTERNET TREATIES, MAINTAINING THAT EXISTING COPYRIGHT LEGISLATION IS ALREADY CONSISTENT WITH THE TREATIES' HIGH STANDARDS. MANY OF THESE MEASURES HAVE BEEN UNDER CONSIDERATION FOR SIX MONTHS, AND IT NOT CLEAR WHEN AND TO WHAT DEGREE THEY WILL BE IMPLEMENTED. THE JUSTICE MINISTRY TOLD US THAT IT HAS ASSIGNED NEWLY-TRAINED JUDGES TO SPECIALIZED IPR COURTS, BUT BELIEVES FURTHER TRAINING WOULD BE USEFUL IN COMBATING PIRACY. END SUMMARY.

NEW ANTI-PIRACY MEASURES UNDER CONSIDERATION

2. (SBU) Culture and Tourism Ministry Undersecretary Mustafa Isen told Econ Counselor on November 18 that Ministry officials had been consulting with industry associations over the last six months to develop new methods of combating copyright piracy. The Ministry had decided to take a number of measures, including a ban on street sales of "cultural materials" and making piracy a public crime, e.g. empowering the police to take enforcement action without a specific complaint from the rightholder. Isen predicted that Parliament could act on draft legislation as soon as the end of 2003.

3. (U) Diren Cakmak, of the Culture and Tourism Ministry, was to make a presentation on copyright protection in Turkey at the December Economic Partnership Commission (EPC) meeting in Washington, but time constraints did not permit her to do so. She passed a copy of the presentation, reproduced in para 6, to Econoff during the EPC. The presentation elaborates on Turkish legislation and on new enforcement measures under consideration. It claims a decrease in piracy rates since 2001, when the copyright law was last amended. The Ministry supports Turkish accession to the WIPO Copyright and WIPO Performances and Phonograms Treaties, but maintains that existing copyright law fully implement the treaties. Note: The International Intellectual Property Alliance does not share this view, and believes amendments are needed to specifically outlaw circumvention of technical measures to prevent copying. End Note. Turkey completed domestic procedures to bring the Berne and Rome Agreements into force in October 2003.

4. (SBU) The new laws and enforcement measures under consideration include: a ban on street sales of "intellectual and artistic works"; a bill to empower the police to confiscate pirated goods; a bill to classify unauthorized duplicating and dissemination of copyright materials as an organized crime; eliminating nondeterrent penalties in the Cinema Law; introducing more differentiated penalties for piracy; use of standard codes, such as SID Codes, to control copies of copyright material; licensing places which duplicate, disseminate or sell copyright materials; a public education campaign. In a followup discussion on

December 17, Cakmak told us that the Culture Ministry is still consulting with the private sector on these changes and that none has as yet been implemented.

15. (U) In a December 17 meeting, Ayse Saadet Arikan, Director General for the EU at the Justice Ministry, told us that IPR training for judges and other officials is an important factor in improving enforcement. A group of eight judges completed a yearlong training program in Europe and have now been assigned to specialized IPR courts in Istanbul, Ankara and Izmir. She said that further training would be very helpful in upgrading the competency of judges in this area.

16. (SBU) Begin Text Culture and Tourism Ministry Presentation:

GENERAL DIRECTORATE OF COPYRIGHT AND CINEMA

"FIELD OF COPYRIGHT AND RELATED RIGHTS"

represented by DIREN CAKMAK

December 2003

In the fast-moving global economy of the 21st century, the importance of copyright and related rights in business life is increasing constantly. It is known that respect for copyright and related rights is of benefit not only to creators but to society as a whole. Countries which convert their creative resources into economic assets are capable of generating wealth. Therefore the legislative arrangements realized in the past and the legislative arrangements and implementations that will be realized in near future by Ministry of Culture and Tourism in the field of copyright and related rights will lead Turkey toward effective participation in the global economy. In Turkey, arrangements related to moral and financial rights of authors of intellectual and artistic works and criminal sanctions to be forced in the case of infringement thereof are stated within the scope of Law no. 5846 on Intellectual and Artistic Works dated 1951. So far three amendments have been made within the law concerned. Last amendment was made with the Law no. 4630 in the year 2001. The Law on Intellectual and Artistic Works complies with EU Council Directives, Bern and Rome Conventions, WIPO Copyright and WIPO Performances and Phonograms Treaties and TRIPS Agreement.

Possible questions and replies are listed below:

Question: Law on Intellectual and Artistic Works needs further amendment with respect to copyright in the information society, sui generis database protection,, artists' resale rights and rental rights.

Reply: *The Law on Intellectual and Artistic Works will be amended, studies on Draft Bill has not yet finished but with this amendment it is aimed;
-- to provide sui generis protection for databases
-- to make responsible both service and content providers of the transmission of copyrighted works through Internet without consent of right holder,
-- to provide giving shares from the sale values of fine arts.

*The decree on giving shares from the sale values of fine arts will be in force as soon as possible.

*The principles related with the applications regarding artists' resale and rental rights will be determined by the regulation to be in force as soon as possible.

Question: The process of accession to the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty is still pending. The same applies to the Rome and Bern Agreements which were ratified in 1996 but never published in the Turkish Official Gazette.

Reply: *The Bern and Rome Agreements were published in the Turkish Official Gazette in October 2003.

*Law on Intellectual and Artistic Works is in full compliance with the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty and it is aimed to be party to the WIPO Copyrights Treaty and WIPO Performances and Phonograms Treaty as soon as possible.

Question: Piracy and counterfeiting remains a serious problem in Turkey

Reply: *Level of piracy and infringement in intellectual and artistic works is declining.

*Piracy Levels In Intellectual and Artistic Works Sectors Before and After 2001 (Sector, Percent Before 2001, Percent After 2001)
(Last amendment in Law on Intellectual and Artistic Works was made in the year 2001)

CINEMA 85 40
MUSIC 65 35
SOFTWARE 95 50
BOOK 50 40

*Ministry of Culture and Tourism combats with piracy in a consistent and strong manner. Therefore within the framework of combat with piracy, it is aimed to make legal arrangements in the Law on Municipality, Law on Municipality Revenue, Law on Combat with Smuggling, Law on Rights and Duties of the Police Officials, Law on Combat with Organizations of Organized Crime, Law on Cinema, Video and Musical Works;

1-With the legal arrangement that will be made in the Law on Municipality and Law on Municipality Revenue; it is aimed to ban the sale of intellectual and artistic works on the streets.

2-With the legal arrangement that will be made in the Law on Combat with Smuggling; it is aimed to stop the exportation and importation of the pirated copies of intellectual and artistic works.

3-With the legal arrangement that will be made in the Law on Rights and Duties of the Police Officials; it is aimed to make police officials take action by confiscating the pirated copies of intellectual and artistic works and sending them to the public prosecutor with the notice of crime.

4-With the legal arrangement that will be made in the Law on Combat with Organizations of Organized Crime; it is aimed to name to duplicate and disseminate the copies of intellectual and artistic works without the consent of the right owner as organized crime.

5-With the legal arrangement that will be made in the Law on Cinema, Video and Musical Works; it is aimed to abolish the provisions of ineffective penalties which are far away from being deterrent.

*Moreover, Law on Intellectual and Artistic Works will be amended, studies on Draft Bill has not yet finished but with this amendment it is aimed;
-- to make compulsory the usage of international standard codes such as SID Code or ISRC or ISBN etc. for copies of intellectual and artistic works.
-- to create a system of applicable penalties such as stepped penalties.
-- to control the places which duplicate or disseminate or distribute or sell the copies of intellectual and artistic works by classifying and giving them certificates and inspecting these places frequently.
-- to revise the existing registration system which is still applied to the cinematographic and musical works. It is planned that all the forms and documents used during the registration will be rearranged and the registration system will be planned in terms of the direct right ownership.
-- to form the on-demand registration system in other intellectual and artistic work groups. With this system, all the information related to the works and to the authority of usage of financial rights of authors and other right owners will be taken under registration in

detail.

Question: The Turkish Ministry of Culture and Tourism established enforcement committees in all 81 provinces of Turkey in 2002. But the fight against piracy is still not effective as suggested by the high level of infringements and the low number of court cases and sanctions applied to offenders.

Reply: *Anti-piracy inspection commissions detected great number of pirated materials including tangible copies of entertainment and business software, cinematographic and musical works and books in the year 2003 and also hundreds of people have been prosecuted.

*Anti-piracy inspection commissions perform their inspections during daylight and after working hours such as at midnight. It is aimed;
-- to overcome the need for financial resources such as technical equipment, office rents, expenses of inspection etc. paying special attendance to the cities where piracy is widespread.
-- to establish a Provincial Inspection Coordination Unit in which the representatives of cinema, music, software and publication sectors are included as well as the representatives of Ministry of Culture and Tourism and the collecting societies.
-- to provide cooperation and instant information access by developing the software used and spread the usage of this software in the cities.

Question: Administrative capacity should be strengthened with more inter-institutional co-operation between Ministry of Culture and Tourism and other ministries and the judiciary.

Reply: *Besides the participation of the Ministry of Culture and Tourism, the regular participation of representatives of Ministry of Internal Affairs, Ministry of Finance and collecting societies to the inspections of anti-piracy inspection commissions is necessary. Therefore it is aimed to accelerate coordination and communication between Ministry of Culture and other ministries and collecting societies in order to combat with piracy.

*Turkish people generally find unfair that the judiciary charge both fine and prison penalties in all cases of infringement and piracy. So it is planned;
-- to adopt the physical piracy as public crime.
-- to differentiate the end seller and producer of pirated goods and charge different penalties according to the feature of the crime.
-- to differentiate the crime for the first time and the repetition of the crime in the scope of charging penalties.
-- to create a system of applicable penalties such as stepped penalties.

Question: The awareness raising campaigns in the field of copyright and related rights have not led to any significant visibility or impact.

Reply: Regarding that it is necessary to inform the public opinion about the importance of copyright and related rights;
-- Ministry of Culture and Tourism has prepared several spot movies within the framework of combating against piracy. These movies are shown in TV channels and in cinema saloons.
-- Several meetings realized by Ministry of Culture and Tourism with the title of combating against piracy in which representatives of collecting societies and related sectors attended.
-- Ministry of Culture and Tourism continues to support the infrastructure and technical equipment projects and to strengthen the collecting societies by means of administrative, financial and legal ways.
-- It is aimed to continue the studies to inform judicial milieu.
-- Ministry of Culture and Tourism will get into contact with Ministry of National Education to make students celebrate World Intellectual Property Day on every 26 April.
-- Ministry of Culture is planning to have prepared entertainment software for the children within the framework of combating against piracy.
-- A campaign named "Respect to Copyright and Related

Rights" will be started as soon as possible. With this campaign, it is planned;
-- to organize "No to consume pirated copies of intellectual and artistic works" concerts.
-- to make famous artists, musicians, novelists, columnists etc. give speeches to people in public places in 81 provinces within the framework of consumption of original copies of intellectual and artistic works.

Question: Establishment of an institute in the field of copyright and related rights.

Reply: Sectors of intellectual and artistic works supported in the past and they still support the establishment of an institute, either dependent to the Ministry of Culture and Tourism or independent, in the field of copyright and related rights. Establishment of this institute will be reconsidered after the studies in restructuring the state are finished.

Establishment of an environment in which the respect to copyright and related rights is provided forms the essence to capture the value of creativity and knowledge to promote both economic and cultural development. Therefore Turkey continues to implement sound copyright and related rights policy.

End Text.

Edelman